

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Stephen Gazzera III**, in individual  
and representative capacity as  
trustee of the Stephen Gazzera III  
Living Trust dated September 3,  
2004;  
**Leela Services Inc**, a California  
Corporation; and Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Stephen Gazzera III, in individual and representative capacity as trustee of the Stephen Gazzera III Living Trust dated September 3, 2004; Leela Services Inc, a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual  
2 dexterity impairments. He uses a wheelchair for mobility and has a specially  
3 equipped van.

4 2. Defendant Stephen Gazzera III, in individual and representative  
5 capacity as trustee of the Stephen Gazzera III Living Trust dated September 3,  
6 2004, owned the real property located at or about 5210 Prospect Rd., San Jose,  
7 California, in October 2018.

8 3. Defendant Stephen Gazzera III, in individual and representative  
9 capacity as trustee of the Stephen Gazzera III Living Trust dated September 3,  
10 2004, owned the real property located at or about 5210 Prospect Rd., San Jose,  
11 California, in January 2019.

12 4. Defendant Stephen Gazzera III, in individual and representative  
13 capacity as trustee of the Stephen Gazzera III Living Trust dated September 3,  
14 2004, owns the real property located at or about 5210 Prospect Rd., San Jose,  
15 California, currently.

16 5. Defendant Leela Services Inc owned The Mynt located at or about 5210  
17 Prospect Rd., San Jose, California, in October 2018.

18 6. Defendant Leela Services Inc owned The Mynt located at or about 5210  
19 Prospect Rd., San Jose, California, in January 2019.

20 7. Defendant Leela Services Inc owns The Mynt ("Restaurant") located at  
21 or about 5210 Prospect Rd., San Jose, California, currently.

22 8. Plaintiff does not know the true names of Defendants, their business  
23 capacities, their ownership connection to the property and business, or their  
24 relative responsibilities in causing the access violations herein complained of,  
25 and alleges a joint venture and common enterprise by all such Defendants.  
26 Plaintiff is informed and believes that each of the Defendants herein,  
27 including Does 1 through 10, inclusive, is responsible in some capacity for the  
28 events herein alleged, or is a necessary party for obtaining appropriate relief.

1 Plaintiff will seek leave to amend when the true names, capacities,  
2 connections, and responsibilities of the Defendants and Does 1 through 10,  
3 inclusive, are ascertained.

4  
5 **JURISDICTION & VENUE:**

6 9. The Court has subject matter jurisdiction over the action pursuant to 28  
7 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
8 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

9 10. Pursuant to supplemental jurisdiction, an attendant and related cause  
10 of action, arising from the same nucleus of operative facts and arising out of  
11 the same transactions, is also brought under California's Unruh Civil Rights  
12 Act, which act expressly incorporates the Americans with Disabilities Act.

13 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
14 founded on the fact that the real property which is the subject of this action is  
15 located in this district and that Plaintiff's cause of action arose in this district.

16  
17 **FACTUAL ALLEGATIONS:**

18 12. Plaintiff went to the Restaurant in October 2018 and January 2019 with  
19 the intention to avail himself of its goods, motivated in part to determine if the  
20 defendants comply with the disability access laws.

21 13. The Restaurant is a facility open to the public, a place of public  
22 accommodation, and a business establishment.

23 14. Parking spaces are one of the facilities, privileges, and advantages  
24 offered by Defendants to patrons of the Restaurant.

25 15. Unfortunately, on the dates of the plaintiff's visit, the defendants did not  
26 provide accessible parking in conformance with the ADA Standards.<sup>1</sup>

27  
28 <sup>1</sup> For example, the parking spaces marked and reserved for persons with disabilities is not van accessible. Additionally, there were inaccessible slopes in the parking space reserved for persons with disabilities. On

1 16. Currently, the defendants do not provide accessible parking in  
2 conformance with the ADA Standards.

3 17. Entrance into the Restaurant is another one of the facilities, privileges,  
4 and advantages offered by Defendants to patrons of the Restaurant.

5 18. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
6 not provide accessible door hardware in conformance with the ADA  
7 Standards.

8 19. Currently, the defendants do not provide accessible entrance in  
9 conformance with the ADA Standards.

10 20. Plaintiff personally encountered these barriers.

11 21. By failing to provide accessible facilities, the defendants denied the  
12 plaintiff full and equal access.

13 22. The lack of accessible facilities created difficulty and discomfort for the  
14 Plaintiff.

15 23. The defendants have failed to maintain in working and useable  
16 conditions those features required to provide ready access to persons with  
17 disabilities.

18 24. The barriers identified above are easily removed without much  
19 difficulty or expense. They are the types of barriers identified by the  
20 Department of Justice as presumably readily achievable to remove and, in fact,  
21 these barriers are readily achievable to remove. Moreover, there are numerous  
22 alternative accommodations that could be made to provide a greater level of  
23 access if complete removal were not achievable.

24 25. Plaintiff will return to the Restaurant to avail himself of its goods and to  
25 determine compliance with the disability access laws once it is represented to  
26 him that the Restaurant and its facilities are accessible. Plaintiff is currently

27 \_\_\_\_\_  
28 information and belief there are other issues with the parking that renders it non-compliant. Those issues will  
be fleshed out in discovery and inspections. The plaintiff seeks to have fully compliant parking provided.

deterred from doing so because of his knowledge of the existing barriers and his uncertainty about the existence of yet other barriers on the site. If the barriers are not removed, the plaintiff will face unlawful and discriminatory barriers again.

26. Given the obvious and blatant nature of the barriers and violations alleged herein, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the  
2 accommodation would work a fundamental alteration of those  
3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is  
5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
6 defined by reference to the ADA Standards.

7 c. A failure to make alterations in such a manner that, to the  
8 maximum extent feasible, the altered portions of the facility are  
9 readily accessible to and usable by individuals with disabilities,  
10 including individuals who use wheelchairs or to ensure that, to the  
11 maximum extent feasible, the path of travel to the altered area and  
12 the bathrooms, telephones, and drinking fountains serving the  
13 altered area, are readily accessible to and usable by individuals  
14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 29. When a business provides parking for its customers, it must provide  
16 accessible parking in compliance with the ADA Standards.

17 30. Here, the lack of accessible parking in compliance with the ADA  
18 Standards is a violation of the law.

19 31. When a business provides an entrance, it must provide an accessible  
20 entrance in compliance with the ADA Standards.

21 32. Here, no such accessible entrance has been provided in compliance with  
22 the ADA Standards.

23 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
24 here because the conditions challenged in this lawsuit do not comply with the  
25 1991 Standards.

26 34. A public accommodation must maintain in operable working condition  
27 those features of its facilities and equipment that are required to be readily  
28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

1       35. Here, the failure to ensure that the accessible facilities were available  
2 and ready to be used by the plaintiff is a violation of the law.

3  
4       **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
5       **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
6 Code § 51-53.)

7       36. Plaintiff repleads and incorporates by reference, as if fully set forth  
8 again herein, the allegations contained in all prior paragraphs of this  
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
10 that persons with disabilities are entitled to full and equal accommodations,  
11 advantages, facilities, privileges, or services in all business establishment of  
12 every kind whatsoever within the jurisdiction of the State of California. Cal.  
13 Civ. Code §51(b).

14       37. The Unruh Act provides that a violation of the ADA is a violation of the  
15 Unruh Act. Cal. Civ. Code, § 51(f).

16       38. Defendants’ acts and omissions, as herein alleged, have violated the  
17 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
18 rights to full and equal use of the accommodations, advantages, facilities,  
19 privileges, or services offered.

20       39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
21 discomfort or embarrassment for the plaintiff, the defendants are also each  
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
23 (c).)

24       40. Although the plaintiff was markedly frustrated by facing discriminatory  
25 barriers, even manifesting itself with minor and fleeting physical symptoms,  
26 the plaintiff does not value this very modest physical personal injury greater  
27 than the amount of the statutory damages.

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act, which provides for actual  
9 damages and a statutory minimum of \$4,000 for each offense.

10           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12  
13 Dated: May 16, 2019

CENTER FOR DISABILITY ACCESS

14  
15 By:



16  
17 Amanda Seabock, Esq.  
18 Attorney for plaintiff  
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